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**Fax Transmission** | May 16, 2003

TO: Commissioner for Patents  
Attn: Examiner Tony G. Soohoo  
Patent Examining Corps  
Facsimile Center  
Washington, D.C. 20231

FROM: John J. Gresens

OUR REF: 11709.45USC1  
TELEPHONE: 612-371-5265

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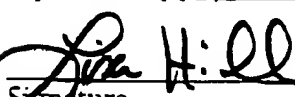
Request For Reconsideration of Petition Under  
37 CFR 1.183, Exhibits H and I

Applicant: JONSSON  
Serial No.: 08/968,034  
Filed: NOVEMBER 12, 1997  
Group Art Unit: 1723  
Our Ref. No.: 11709.45USC1

Please charge Deposit Account No. 13-2725 in the amount of \$130.00 for Petition Fee. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate.

By: Name: John J. GresensReg. No. 33,112

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

Lise Hill  
Signature5/16/03  
Date

S/N 08/968,034

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	JONSSON	Examiner:	T. SOOHOO
Serial No.:	08/968,034	Group Art Unit:	1723
Filed:	NOVEMBER 12, 1997	Docket No.:	11709.45USC1
Title:	METHOD AND DEVICE FOR FEEDING COMPONENTS FOR BONE CEMENT INTO A MIXING VESSEL FOR THESE		

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CERTIFICATE UNDER 37 CFR 1.6(d): I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on May 16, 2003.

By: 

Name: Lisa Hill

**Mail Stop PCT**

Attn: International Division, Legal Staff  
Commissioner for Patents  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR 1.183**

Dear Sir:

This request for reconsideration is in response to the Decision mailed March 26, 2003 ("the Decision"), dismissing Applicant's petition ("the Petition") filed on October 1, 2002. In the petition, Applicant requested that application Serial No. 08/545,591 ("the '591 application"), filed on November 13, 1995, be treated as a filing under 35 USC 111(a). The Petition was dismissed as untimely because the Petition was submitted after the two-month time period set forth in 37 CFR 1.181(f).

**A. The November 13, 1995 filing**

On November 13, 1995, the papers required under 35 USC 111(a) for an application for patent included:

- a) a specification as prescribed by 35 USC §112;

- b) a drawing as prescribed by 35 USC §113; and
- c) an oath by the application as prescribed by 35 USC §115.

(Manual of Patent Examining Procedure 6th Edition, Revision No. 1, September 1995 citing 35 USC 111, copy submitted herewith as Exhibit H).

The November 13, 1995 filing contained all that was necessary for a filing under 35 USC 111(a), including a specification meeting the requirements of 35 USC 112 (see Petition Exhibit A), drawings as required by 35 USC 113 (see Petition Exhibit A), and an Oath or Declaration of the inventor (see Exhibit I enclosed herewith). In addition, the November 13, 1995 filing also contained a filing fee as well as an authorization to charge any additional fees to a Deposit Account (see Petition Exhibit C). Therefore, the November 13, 1995 filing contained all that was necessary for a filing under 35 USC 111(a), and the '591 application can be treated under 35 USC 111(a).

#### **B. 37 CFR 1.181(f)**

Dismissal of a petition based on lapse of the two-month time period set forth in 37 CFR 1.181(f) is permissive, as evidenced by the use of "may" in "may be dismissed" in the rule. Therefore, dismissal is not mandatory.

#### **C. 37 CFR 1.183**

The regulations permit suspension or waiver of any requirement of the regulations, which is not a requirement of the statutes, in an extraordinary situation when justice requires. 37 CFR 1.183.

Applicant respectfully requests waiver or suspension of the two-month time period set forth in 37 CFR 1.181(f) which is necessary to prevent harm to the Applicant. In particular, justice requires that the two-month time period be waived or suspended to prevent harm to Applicant that would arise by not correcting the filing date of the "non-entered subject matter" in the form of a substitute specification and substitute drawings filed on November 13, 1995.

In the initial November 13, 1995 filing of the '591 application, new Figures 7-13 along with accompanying description in a substitute specification ("the non-entered subject matter") were to be added (see Petition Exhibit D). This subject matter was denied entry by the Examiner, and, according to the Examiner, is not considered part of the original specification (see Petition Exhibit B). It was not until after November 13, 1995 that this non-entered subject matter was introduced into, and became a part of, Applicant's patent application.

As noted in the Petition, the application papers submitted on November 13, 1995 included the following statements:

"In connection with the national phase filing of the subject PCT application..."

"...take the actual date of filing and not the international filing date."

"If there are any problems relating to this procedure, which is in the nature of a continuation-in-part filing..."

(see Petition Exhibit D).

On November 13, 1995, 37 CFR 1.495(g) stated that:

"The documents submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111."  
(see Petition Exhibit E).

In addition, on November 13, 1995, the policies of the U.S. Patent and Trademark Office required that:

"...applicant's application papers must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371; otherwise the submission will be considered as being made under 35 U.S.C. 111."

"Also, if there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a)."

(see Petition Exhibit F).

Therefore, while the November 13, 1995 filing was treated as a national stage entry, the '591 application papers contained at least two instructions that the filing was to be treated as a continuation-in-part application of the PCT application, rather than as a national stage filing. Therefore, Applicant's instructions as to how to treat the '591 application papers were clear. To the extent that the application papers were equivocal, conflicting, or otherwise unclear, U.S. Patent and Trademark Office policy dictated that the filing be deemed made under 35 USC 111. Accordingly, based on Applicant's instructions and under U.S. Patent and Trademark Office policy in effect at the time, the '591 application papers should have been treated as a continuation-in-part filing under 35 USC 111 and been given the November 13, 1995 filing date.

Because of the later filing date for the non-entered subject matter, there is harm to Applicant because additional subject matter is potentially made available as prior art against the non-entered subject matter, including possibly Applicant's own published PCT applications (WO 94/26403 and WO 97/18031), and the published version of Applicant's Swedish priority application (SE 9301599-8).

In view of the harm to Applicant by having a later filing date for the non-entered subject matter, waiver or suspension of the two-month time period in this instance, and treatment of the '591 application under 35 USC 111(a), would avoid an injustice to Applicant.

#### **D. Priority Claim**

The Decision also asserts that Applicant would not be entitled to obtain the benefit/priority of PCT/SE94/00415 and Swedish priority application 9301599-8. Applicant respectfully traverses.

A proper claim for foreign priority was contained in the Declaration and Power of Attorney signed by the inventor on October 16, 1995 in the '591 application (see the enclosed Exhibit I). In addition, the present application has a filing date of November 12, 1997. As a result, the present application is governed by the pre-November 29, 2000 versions of 35 USC 119, 35 USC 120, 37 CFR 1.55, and 37 CFR 1.78. See Manual of Patent Examining Procedure Original 8th Edition, Revision 1, February 2003, at § 201.14. For non-provisional applications filed prior to November 29, 2000, a claim for priority and submission of priority documents may

be made up until the time when a patent is granted. Manual of Patent Examining Procedure Original 8th Edition, Revision 1, February 2003, at § 201.14(a).

**E. Relief Requested**

Applicant respectfully requests that the U.S. Patent and Trademark Office waive the two-month time period set forth in 37 CFR 1.181(f). Further, Applicant requests that the U.S. Patent and Trademark Office correct the '591 application, filed on November 13, 1995, to have that very filing date; the date that is due given Applicant's compliance with the applicable statute.

Applicant respectfully requests that the substitute specification and preliminary amendment filed on November 13, 1995 in the '591 application be considered part of the original application papers and that all subject matter disclosed therein be granted the correct filing date of November 13, 1995.

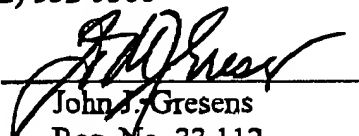


Dated: May 16, 2003

Respectfully Submitted,

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